

## CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

### STAFF REPORT

#### ISSUE

At last month's meeting, the I-Bank Board requested information concerning the activities that have taken place between 2003 and 2009 by the Imperial Irrigation District (IID) to meet the conditions established in the Preliminary Loan Guarantee Commitment approved by the Board on June 23, 2003 ("Commitment"). The purpose of this report is to respond to this question and provide general background regarding the Commitment.

#### BACKGROUND

History of the Water Use: California's basic entitlement to Colorado River water is 4.4 million acre-feet, but in the 1990's, California has used more than 5 million acre-feet annually.<sup>1</sup>

On April 29, 1998, IID and the San Diego County Water Agency ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. Metropolitan Water District in Los Angeles (MWD) and Coachella Valley Water District (CVWD) challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements"). Early termination would eliminate the contract revenues that IID and its landowners would rely upon to repay bonds issued to finance the water supply capital improvements constituting IID water conservation. IID would not approve the proposed QSA unless there was a guarantee to cover their risks involving \$150 million of water conservation projects they would be obligated to construct. For more details, see footnote 2<sup>2</sup>.

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<sup>1</sup> Babbitt Signs Historic 7-state Water Accord By Steve La Rue, The San Diego Union Tribune, January 17, 2001

<sup>2</sup> On January of 2001, the Secretary of the U.S. Department of the Interior implements Interim Surplus Guidelines under which surplus Colorado River water is available for a 15-year period only if the Agreements are executed by December 31, 2002. The intent of the guidelines is to provide a "soft landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. On September 18, 2002, the California Legislature approved ACR 251 (Canciamilla) declaring that it is of utmost importance to the people of California that the QSA be executed on or before December 31, 2002.

In January, 2003, the Secretary of the Interior suspended the Guidelines when parties fail to conclude the QSA and related transfers by December 31, 2002, due to unresolved questions stemming from early termination concerns.

A critical problem stemmed from the announcement by Federal officials late in January of 2003 that failure to reach a consensus on this set of documents and new obligations meant California was no longer entitled to any additional water from the Colorado River under the Interim Surplus Guidelines. The complex QSA had been rejected at that time by a 3-2 vote of the IID Board due to concern over financial uncertainties (as well as various other issues).

The Loan Guarantee: Pursuant to the I-Bank's enabling statute, including Government Code section 63060, the I-Bank has broad authority to provide loan guarantees. In 2003, the Imperial Irrigation District ("IID") requested that the I-Bank provide a loan guarantee in support of revenue bonds to be issued in the future to finance water conservation projects designed to meet the requirements of the Agreements.

Pursuant to Resolution 03-18, adopted on June 27, 2003, and pursuant to the approved Criteria, Priorities and Guidelines (Guidelines), the I-Bank Board approved a Preliminary Loan Guarantee for IID. By its terms, the Commitment establishes conditions to the issuance of a Final Loan Guarantee, many of which remain outstanding. The Commitment will expire on December 31, 2009, unless extended by the Board.

The Commitment gives IID the right to a Final Loan Guarantee if and when the conditions set forth in the Commitment are met. As set forth in Resolution 03-18, the terms of the Commitment include the terms of Resolution 03-18, the application submitted by IID on May 13, 2003 and the requirements of the Guidelines.

(A copy of the staff report and Resolution 03-16 that approved the Guidelines are attached as Exhibit 1. A copy of the staff report, the District's letter dated December 12, 2003, and Resolution 03-18 approving the Preliminary Loan Guarantee are attached as Exhibit 2.)

IID's Activities Subsequent to approval of Preliminary Loan Guarantee to Date.

From the earliest meetings in February 2003 between the I-Bank staff and IID, the staff relied upon certain key documents provided by the IID professional team in order to guide our activities to structure a satisfactory guarantee mechanism for IID. One of these documents was a bar graph prepared by the IID economist to display the time span—roughly ten years--over which the IID water conservation projects of varying size and cost could be ready for construction. This chart was entitled "IID Investment Debt Outstanding for System Improvements" and displayed the array of required project financings in a sequence over 10 years, from approximately 2007-08 through 2017-18. (Attached as Exhibit 3).

Subsequent to the execution of the Commitment and the Agreements, IID began to work on matters necessary to begin financing and completing projects which would satisfy the Agreements.

## 2004<sup>3</sup>

In IID's 2004 Annual Report, IID states the Agreements contain a schedule for ramping up the amount of conserved water to be transferred. IID transferred 10,000 acre feet to SDCWA in 2003 and another 20,000 in 2004. IID also worked with California Department of Fish and Game and the United States Fish and Wildlife Service to develop and begin the implementation of a mitigation plan for wildlife and endangered species.

## 2005

In IID's 2005 Annual Report, IID notes it ramped up the amount of water it transferred and took the first steps toward developing the detailed plans that will delineate how to conserve the water necessary to meet the required long-term (up to 75 years) QSA transfer schedule.

IID hired a group of consultant experts that led the process of developing the roadmap to reach the conservation levels needed to sustain the water transfer while maintaining or even improving crop yields. Growers were added to the conservation efforts. The detailed plan for the conservation effort, called the Efficiency Conservation Definite Plan ("Definite Plan"), continued to be developed. A draft plan was scheduled to be ready for review by the end of 2006.

## 2006

The creation of the Definite Plan– the mechanism to determine ways water can be conserved by efficiency conservation measures in the Imperial Irrigation District delivery system and on-farm in the Imperial Valley – was the focal point of the year 2006 for IID. The IID QSA implementation team also employed a relatively new science, referred to as neuro-networks, which attempts to solve water delivery equations across the IID service area in the most efficient way possible to create conserved water.

IID's work to compile extensive information – including satellite imagery – about IID's water delivery system and the farmland it supplies into a proprietary database and state-of-the art computer model IID had previously developed. A collaborative effort by consultants, IID staff and growers, identified issues and recommended designs and approaches for efficiency-based on-farm water conservation resulting in a series of recommendations.

## 2007

Implementation of certain components of the QSA terms began with IID and its landowners and growers. To achieve the efficiency water conservation goals, IID

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<sup>3</sup> All of the following discussion is excerpted from IID's Annual QSA Implementation Reports from 2004, 2005, 2006, and 2007, available on the IID website at [www.iid.com/Water/QSAAnnualReports](http://www.iid.com/Water/QSAAnnualReports).

finalized and began to implement the near-term actions set out in the Definite Plan. Near-term actions implemented in 2007 included the development and testing of a computerized integrated information management system to enhance decision making with real time field information. IID also started work on the main canals seepage interception project, which could generate approximately 40,000 acre-feet with the first 4,000 acre-feet of efficiency conservation water scheduled to flow to the Coachella Valley Water District in 2008.

IID also devoted extensive staff time to finalizing the environmental planning documents required for the QSA mitigation requirements. It also continued to plan for a nearly 1,000 acre constructed replacement wetlands that will provide habitat for species affected by IID operation and maintenance activities and the conserved water transfer.

Efforts to plan for the future continued, both within IID's boundaries and throughout the Colorado River system. During the year, IID finalized work on the Definite Plan. A 15-member community panel helped weigh the options as IID developed final recommendations. Work also began on the lining of the All-American Canal. The lining project is an integral part of the QSA and a key component of California's 4.4 Plan to limit the state's use of the Colorado River.

Another ongoing effort in 2007 was continued negotiation on the Natural Community Conservation Plan/Habitat Conservation Plan with state and federal wildlife officials. IID continued the preparation of plans and documents necessary for final permitting which will govern the biological mitigation that IID will implement over the potential 75-year term of the QSA.

## 2008

Implementation of certain components of the QSA continued. Efficiency conservation projects begin in 2008, beginning with the creation of 4,000 acre-feet of conserved system water for transfer to the CVWD. IID also initiated a pilot on-farm efficiency conservation program and continued to develop its longer-term implementation recommendations based on information received from the pilot system efficiency conservation operational programs previously implemented.

## 2009

Implementation of certain components of the QSA continued. Additionally, in a letter dated February 9, 2009, IID approached the I-Bank about the use of the loan guarantee to support a specific proposed debt issuance. IID provided I-Bank with an engineering report of a water project on July 10, 2009. I-Bank staff requested that IID provide an explanation of how the described project would assist IID in meeting the contractual obligations under the Agreements, and how the project qualifies as a "public development facility" as defined in the I-Bank's

statutes. I-Bank staff has had several conference calls with IID and its finance team since that time, and the finance team met with I-Bank staff on August 8, 2009. At the meeting, IID representatives were charged with providing the information previously requested. This information is required by condition number 1 of the Preliminary Loan Guarantee Criteria.

On August 29, 2009, bond counsel for IID submitted a letter to the I-Bank relating to certain conditions and requesting that certain conditions either shouldn't apply or can be met subsequent to the financing. I-Bank staff is reviewing these requests to determine the impacts of these requests on the I-Bank's authority under the Act and whether the requests are consistent with the Preliminary Loan Guarantee Commitment.

On September 14, 2009, The I-Bank received IID's formal application for the issuance of a final loan guarantee.

### **CURRENT STATUS**

I-Bank staff hasn't yet confirmed if all of the other terms of the Commitment and Criteria have been met. In addition, the bond financing currently being considered by IID would require the Board to approve an exception to condition number 7 of the Preliminary Loan Guarantee Guidelines, which requires that the bonds secured by any I-Bank loan guarantee be structured with level debt service unless specific exceptions are approved by the Board as part of the Loan Guarantee. IID has requested consideration of other than level debt service and I-Bank staff is researching the impact of the alternative debt service proposal.

In the October meeting, staff expects to have received all requested information from IID sufficient to report the complete status of all conditions and Guidelines requirements and to otherwise report on the progress of the expected final loan guarantee.

IID has indicated that it intends to meet the conditions established in the Commitment and staff has been working with IID to achieve that goal. Assuming completion of the review of IID's application and other matters, I-Bank staff anticipates bringing a proposed final Loan Guarantee to the Board's November meeting.

**EXHIBIT 1:**  
**May 28, 2003 STAFF REPORT and RESOLUTION 03-16**

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK**  
**AGENDA ITEM I.**

**STAFF REPORT**

**ISSUE:**

The Imperial Irrigation District ("IID") has requested that the State of California provide a loan guarantee in order to insure that they can issue revenue bonds required to finance water conservation measures designed to ensure that California continues to receive the maximum amount of water from the Colorado River. Pursuant to the CIEDB enabling statute, including Government Code section 63060, the CIEDB has broad authority to provide loan guarantees.

Staff prepared draft Criteria, Priorities and Guidelines ("Criteria") for a loan guarantee for IID and received Board approval to circulate the Criteria for public comment. Government Code section 63040 requires "consultation with the appropriate state and local agencies" prior to establishing the Criteria for the selection of projects to receive assistance from the CIEDB. The Board determined previously that this requirement would be satisfied by circulating draft Criteria for public comment to the CIEDB's agenda mailing list and posting it on the CIEDB's web site. Staff has circulated the draft Criteria in accordance with these guidelines, as well as providing the draft Criteria to IID, the San Diego County Water Agency ("SDCWA"), the Coachella Valley Water District (CVWD) and the Metropolitan Water District of Southern California ("MWD"). One public comment, jointly submitted by C. Wesley Strickland, Esq., of the law firm of Hatch and Parent, and Bob Campbell at SDCWA, was received. Mr. Strickland's and Mr. Campbell's proposed revisions to the Criteria, as well as the CIEDB staff response, are attached as Exhibit 1.

**BACKGROUND**

On April 29, 1998, IID and SDCWA entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. MWD and CVWD challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will in the future be limited to a 4.4 million acre-foot annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of the Interior adopted Interim Surplus Guidelines ("Guidelines") that would make

available additional surplus Colorado River water to California for a period of 15 years to provide a "soft landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. Under the terms of the Guidelines, the additional surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. Major reasons for the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if actual mitigation costs exceed those funds available to meet those costs.

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45-years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last Fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the State's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the water supply capital improvements constituting IID water conservation. The purpose of the proposed loan guarantee

is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

**RECOMMENDATION**

Staff recommends adoption of Resolution 03-16 authorizing the adoption of the attached Criteria.



## **CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK FINAL**

### **Criteria, Priorities and Guidelines Proposed Imperial Irrigation District Loan Guarantee**

#### **A. BACKGROUND**

On April 29, 1998, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. The Metropolitan Water District of Southern California ("MWD") and the Coachella Valley Water District ("CVWD") challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will in the future be limited to a 4.4 million acre-foot annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of Interior adopted Interim Surplus Guidelines ("Guidelines") that would make available additional surplus Colorado River water to California for a period of 15 years to provide a "soft-landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. Under the terms of the Guidelines, the surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. Major reasons for the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and expected and potential unexpected environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if during the term of the QSA actual mitigation costs exceed funds available to meet those costs.

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water

supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45 years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the state's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

## **B. PURPOSE OF LOAN GUARANTEE**

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the capital investments enhancing water supply based upon IID water conservation. The purpose of the proposed Loan Guarantee is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

## **C. APPLICATION PROCESS**

1. **Preliminary Loan Guarantee Application.** IID shall submit a Preliminary Loan Guarantee Application to the CIEDB at least 35 days before the date that the CIEDB's board of directors ("Board") will consider the adoption of a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Application must include: an adopted resolution of IID's governing body requesting a Preliminary Loan Guarantee Commitment; a finding acknowledging that the Loan Guarantee will be subject to the Terms and Conditions listed in Section D below; and other information determined necessary by CIEDB's Executive Director.
2. **Preliminary Loan Guarantee Commitment.** If the Board approves a Preliminary Loan Guarantee Application, IID will be provided with a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the QSA, the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board.
3. **Loan Guarantee Application.** IID shall submit a Loan Guarantee Application to the CIEDB at least 75 days before the date that the Board will consider the approval of a Loan Guarantee. The Loan Guarantee Application must include the following: (1)

substantially final draft Bond documents for the bonds to be guaranteed by the Loan Guarantee (“Bonds”<sup>4</sup>), including the indenture, official statement and loan agreement; (2) detailed information and documentation demonstrating that IID, the projects to be financed with the Bonds, and the Bonds comply with the Terms and Conditions listed in Section D; (3) other information and documentation deemed necessary by CIEDB’s Executive Director.

4. **Loan Guarantee.** If the Board approves the Loan Guarantee Application, IID will be issued a Loan Guarantee. The Loan Guarantee will be subject to the Terms and Conditions contained in Section D and any other provisions required by the Board.

#### **D. TERMS AND CONDITIONS OF LOAN GUARANTEE**

Any Loan Guarantee will be subject to the following terms and conditions:

1. **Eligible Borrower.** IID must provide documentation that it meets the definition of “Sponsor” contained in Government Code Section 63010(u). The Bonds to be guaranteed may be issued by IID or another conduit issuer on behalf of IID.
2. **Eligible Project.** The projects to be financed with Bond proceeds (“Project”) must be consistent with the definition of “Public Development Facilities” contained in Government Code Sections 63010(p). Additionally, the Project must be for the purpose of IID meeting its contractual obligations under the Agreements.
3. **Eligible Costs.** The costs of the Project must be consistent with the definition of “Cost” contained in Government Code Section 63010(f).
4. **Amount.** The amount of any individual Loan Guarantee shall be approved by adopted resolution of the Board. The maximum amount of all Loan Guarantees must not exceed an amount contained in the Guarantee Trust Account (see #12) and allowed by the Reserve Account Requirement (see #13).
5. **Credit Rating Requirement.** Prior to the execution of a Loan Guarantee, IID must provide a letter from either Moody’s Investor’s Service, Standard & Poor’s Ratings Service, or Fitch Ratings that the Bonds would be rated at least Baa1/BBB+/BBB+, respectively, if the early termination risk did not exist.
6. **Debt Service Reserve Fund.** Any Bonds must have a debt service reserve fund funded at the maximum amount authorized under the Internal Revenue Code for tax-exempt debt.
7. **Amortization Pattern of Bonds.** Any Bonds must be structured with level debt service unless the Board approves specific exceptions as part of the Loan Guarantee.
8. **Term of Bonds.** The term of any Bonds shall not exceed 30 years.

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<sup>4</sup> Defined in Government Code section 63010 (e).

9. **Fixed Rate.** The interest rate on any Bonds must be a fixed rate.
10. **IID Resolution.** IID's Loan Guarantee Application must contain a certified copy of the adopted resolution required by Government Code Section 63041(a).
11. **Prevailing Wages.** The Project must comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, including the payment of prevailing wages.
12. **Funding of Guarantee Trust Account.** Upon approval of the Criteria, Priorities and Guidelines, the CIEDB will commit \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060. Upon approval of a Preliminary Loan Guarantee Commitment, the CIEDB will commit the \$20 million to a sub account within the Guarantee Trust Fund named the Imperial Irrigation District Infrastructure Guarantee Trust Account ("IID Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or the Loan Guarantee is in effect, funds in the IID Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the IID Guarantee Trust Account shall remain within the IID Guarantee Trust Account, subject to the above-described pledge.
13. **Reserve Account Requirement.** If the CIEDB determines that the amount in the IID Guarantee Trust Account is below any Reserve Account Requirement established pursuant to Government Code section 63064, the CIEDB shall follow the procedures contained therein. Currently, those procedures are as follows:
  - (1) If the CIEDB determines that the amount in the IID Guarantee Trust Account is below the Reserve Account Requirement, the Executive Director shall immediately certify in writing to the Joint Legislative Budget Committee, the Speaker of the Assembly, the Senate Committee on Rules, and the Governor, the sum required to restore the IID Guarantee Trust Account to the Reserve Account Requirement.
  - (2) Upon making the certification, the Executive Director shall ask the Governor to request an appropriation, and shall use his or her best efforts to have a sum requested and appropriated.
  - (3) Upon receiving notice that the amount in the IID Guarantee Trust Account is below the Reserve Account Requirement, the Legislature may, at its discretion, choose to appropriate and pay to the CIEDB for deposit into the IID Guarantee Trust Account that sum that would restore the amount in that account to an amount equal to the Reserve Account Requirement.
14. **Reimbursement and Indemnification Agreement.** Simultaneous with the execution of a Loan Guarantee, CIEDB and IID shall execute an agreement detailing,

among other things, IID representations and CIEDB rights to reimbursement and indemnification acceptable to CIEDB.

15. **Fees.** Simultaneous with the execution of a Preliminary Loan Guarantee Commitment or Loan Guarantee, the IID must reimburse the CIEDB for all out-of-pocket legal and financial advisory fees and internal staff costs incurred in connection with the issuance of the Preliminary Loan Guarantee Commitment or Loan Guarantee. The CIEDB will also charge an annual monitoring fee in an amount to be authorized by the Board at the time the Loan Guarantee is approved.

**RESOLUTION NO. 03-16**

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND  
ECONOMIC DEVELOPMENT BANK APPROVING CRITERIA,  
PRIORITIES AND GUIDELINES FOR A POTENTIAL LOAN  
GUARANTEE FOR THE IMPERIAL IRRIGATION DISTRICT.**

**WHEREAS**, the California Infrastructure and Economic Development Bank (the "Infrastructure Bank") was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following), as now in effect and as it may be amended or supplemented (the "Act"), for the purpose of, among other things, providing financial assistance for public development facilities (as such term is defined in the Act) ("Projects") located in the State of California; and

**WHEREAS**, the Act requires the Infrastructure Bank to establish criteria, priorities and guidelines ("Criteria") for the selection of Projects to receive assistance from the Infrastructure Bank; and

**WHEREAS**, the Imperial Irrigation District ("IID") requires financial assistance in order to insure that they can issue revenue bonds required to finance a water supply project consisting of water conservation measures ("Project") designed to ensure that California continues to receive the maximum amount of water from the Colorado River; and

**WHEREAS**, the Infrastructure Bank has the authority to provide that assistance in the form of a guarantee and desires to establish the Criteria necessary to implement a program for the benefit of the Project ("Program"); and

**WHEREAS**, Staff has consulted with appropriate state and local agencies in order to obtain input on the proposed Criteria for the Program;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

**Section 1.** The Board hereby finds that Staff has complied with the appropriate method of obtaining the consultation required by Government Code Section 63040(a) by mailing a notice of the proposed Criteria to all persons on the Infrastructure Bank mailing list for meeting agendas with instructions as to how to obtain a copy of the proposed Criteria and by placing a copy of the proposed Criteria on the web site of the Infrastructure Bank.

**Section 2.** The proposed Criteria for the Program attached hereto as Attachment 1 is hereby approved by the Board.

**Section 4.** The Executive Director is authorized to transfer \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund.

**PASSED, APPROVED, AND ADOPTED** at a meeting of the California Infrastructure and Economic Development Bank on May 28, 2003 by the following vote:

AYES: Hatamiya, Lloyd, Larson

NOES: None

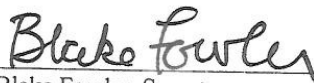
ABSENT: None

ABSTAIN: None



Stanton C. Hazelroth, Executive Director

Attest:



Blake Fowler, Secretary

**EXHIBIT 2:  
STAFF REPORT OF JUNE 27, 2003, IID LETTER OF DECEMBER 12, 2003  
and RESOLUTION 03-18 STAFF REPORT**

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK  
AGENDA ITEM  
STAFF REPORT**

**ISSUE:**

The Imperial Irrigation District ("IID") has requested that the State of California provide a loan guarantee in order to better assure that they can issue revenue bonds required to finance water conservation measures designed to ensure that California continues to receive the maximum amount of water from the Colorado River. Pursuant to the CIEDB enabling statute, including Government Code section 63060, the CIEDB has broad authority to provide loan guarantees. At the May 28, 2002, meeting of the CIEDB Board, Criteria, Priorities and Guidelines ("Criteria") were adopted for a potential Imperial Irrigation District Loan Guarantee. A Preliminary Loan Guarantee Application has been received from IID for a Preliminary Loan Guarantee Commitment. The application is consistent with the Criteria.

**BACKGROUND**

On April 29, 1998, IID and the San Diego County Water Authority ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. The Metropolitan Water District of Southern California ("MWD") and the Coachella Valley Water District ("CVWD") challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

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the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and expected and potential unexpected environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if actual mitigation costs exceed those funds available to meet those costs.

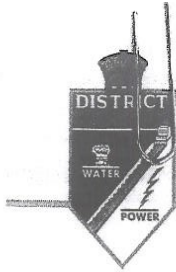
The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45-years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last Fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the State's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the water supply capital improvements constituting IID water conservation. The purpose of the proposed loan guarantee is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

### **RECOMMENDATION**

Staff recommends adoption of Resolution 03-18 which constitutes a Preliminary Loan Guarantee Commitment for the Imperial Irrigation District.

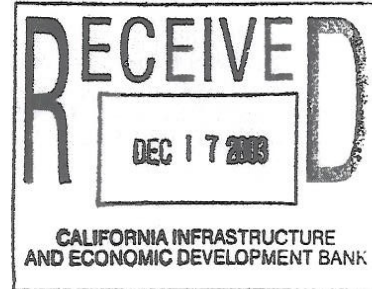


# IMPERIAL IRRIGATION DISTRICT

GENERAL MANAGER'S OFFICE • P.O. BOX 937 • IMPERIAL, CA 92251

December 12, 2003

Mr. Stanton Hazelroth  
Chief Executive Officer  
California Infrastructure and  
Economic Development Bank  
1102 "Q" Street, Suite 6000  
Sacramento, CA 95814



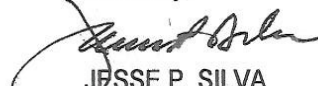
Dear Mr. Hazelroth:

The purpose of this letter is to inform you that the Quantification Settlement Agreement and the Water Conservation and Transfer Agreement defined in the resolution of the California Infrastructure and Economic Development Bank Approving a Preliminary Loan Guarantee Commitment for the Imperial Irrigation District (Resolution No. 03-18) have been executed by the parties.

In accordance with Section 5 of the resolution, execution of the agreements activates the extension of the Preliminary Loan Guarantee Commitment until December 31, 2009.

We look forward to working with you and the new administration in our continuing effort to accomplish these critical water conservation measures.

Sincerely,

  
JESSE P. SILVA  
General Manager

CC:  
Sunne Wright McPeak  
Secretary of Business, Transportation and Housing  
980 9<sup>th</sup> Street, Suite 2400  
Sacramento, CA 95814

Donna Arduin  
Director of Finance  
State Capitol Building  
Sacramento, CA 95814

Philip Angelides  
State Treasurer  
915 Capitol Mall  
Sacramento, CA 95814

**RESOLUTION NO. 03-18**

**RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC  
DEVELOPMENT BANK APPROVING A PRELIMINARY LOAN GUARANTEE  
COMMITMENT FOR THE IMPERIAL IRRIGATION DISTRICT**

**WHEREAS**, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA"), entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation, and subsequently, IID, SDCWA, the Metropolitan Water District of Southern California and the Coachella Valley Water District negotiated terms of a Quantification Settlement Agreement ("QSA") which describes a series of agreements regarding, *inter alia*, settlement of disputes among the parties arising from the Transfer Agreement ("QSA Agreements" and together with the Transfer Agreement, the "Agreements"); and

**WHEREAS**, the IID requires a loan guarantee in order to insure that they can issue revenue bonds required to finance a water supply project consisting of water conservation measures ("Project") needed to implement the Agreements and ensure that California continues to receive the maximum amount of water from the Colorado River; and

**WHEREAS**, pursuant to Resolution 03-16, adopted May 28, 2003 the CIEDB Board adopted criteria, priorities and guidelines ("Criteria") for a potential loan guarantee for the IID and committed \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060; and

**WHEREAS**, on May 13, 2003 the IID submitted to CIEDB a Preliminary Loan Guarantee Application ("Application") requesting a preliminary loan guarantee, attached hereto as Exhibit A; and

**WHEREAS**, Staff has determined that the Applicant-proposed preliminary loan guarantee and Project meet threshold eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the California Infrastructure and Economic Development Banks, as follows:

**Section 1.** The Board hereby finds that the Application is consistent with the Criteria and the Act.

**Section 2.** The Board hereby approves a preliminary loan guarantee on the terms requested in the Application.

**Section 3.** This resolution, in combination with the Application, shall constitute the Preliminary Loan Guarantee Commitment.

**Section 4.** The Executive Director is hereby authorized to transfer all funds in the Guarantee Trust Fund to a sub-account hereby established thereunder entitled the Imperial Irrigation District Infrastructure Guarantee Trust Account ("IID Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or a loan guarantee consistent with the Preliminary Loan Guarantee Commitment is in effect, funds in the IID Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the IID Guarantee Trust Account shall remain within the IID Guarantee Trust Account, subject to the above-described pledge.

**Section 5.** This Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the Agreements, the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board.

**Section 6.** This resolution shall take effect from and after its adoption.

**PASSED, APPROVED, AND ADOPTED** at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on June 27, 2003, by the following vote:

AYES: KATAMINA, LLOYD, LARSON  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

  
Stanton C. Hazelroth, Executive Director

Attest:

  
Blake Fowler, Secretary





# IMPERIAL IRRIGATION DISTRICT

GENERAL MANAGER'S OFFICE • P.O. BOX 937 • IMPERIAL, CA 92251

May 13, 2003

Mr. Stan Hazelroth  
Chief Executive Officer  
California Infrastructure and Economic Development Bank  
1102 Q Street, Suite 6000  
Sacramento, CA 95814

Dear Mr. Hazelroth:

The Imperial Irrigation District (IID) hereby submits a Preliminary Loan Guarantee Application to the California Infrastructure and Economic Development Bank in accordance with the Bank's Criteria, Priorities and Guidelines for the Proposed Imperial Irrigation District Loan Guarantee Program. This Preliminary Loan Guarantee Application includes: an adopted resolution of IID's governing body requesting a Preliminary Loan Guarantee Commitment; a finding acknowledging that the Loan Guarantee will be subject to the Terms and Conditions listed in Section D of the Criteria; and other information determined necessary by CIEDB's Executive Director.

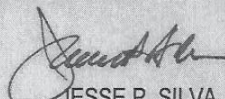
1. **Eligible Borrower.** IID is an irrigation district (special district) which meets the definition of "Sponsor" contained in Government Code Section 63010(u).
2. **Eligible Project.** The projects to be financed with Bond proceeds ("Project") will be consistent with the definition of "Public Development Facilities" contained in Government Code Sections 63010(p). Additionally, the Project shall be for the purpose of IID meeting its contractual obligations under the Agreements.
3. **Eligible Costs.** The costs of the Projects shall be consistent with the definition of "Cost" contained in Government Code Section 63010(f).
4. **Amount.** The amount of any individual Loan Guarantee shall be approved by adopted resolution of the Board. The maximum amount of all Loan Guarantees will not exceed an amount contained in the Guarantee Trust Account (see #12) and allowed by the Reserve Account Requirement (see #13).



5. **Credit Rating Requirement.** Prior to the execution of a Loan Guarantee, IID will provide a letter from either Moody's Investor's Service, Standard & Poor's Ratings Service, or Fitch Ratings that the Bonds would be rated at least Baa1/BBB+/BBB+, respectively, if the early termination risk did not exist.
6. **Debt Service Reserve Fund.** The Bonds will have a debt service reserve fund funded at the maximum amount authorized under the Internal Revenue Code for tax-exempt debt.
7. **Amortization Pattern of Bonds.** The Bonds will be structured with level debt service unless specific exceptions are approved by the Board as part of the Loan Guarantee.
8. **Term of Bonds.** The term of the Bonds will not exceed 30 years.
9. **Fixed Rate.** The interest rate on the Bonds will be a fixed rate.
10. **IID Resolution.** IID's Loan Guarantee Application will contain a certified copy of the adopted resolution required by Government Code Section 63041(a).
11. **Prevailing Wages.** The Project will comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, including the payment of prevailing wages.

As you know, our objective is to obtain a standby financing commitment, consistent with the appropriate provisions of the Bergeson-Peace Infrastructure and Economic Development Bank Act, that will guarantee \$150,000,000 of net project costs. Thank you for your consideration.

Sincerely,

  
JESSE P. SILVA  
General Manager

Attachment: Resolution



## IMPERIAL IRRIGATION DISTRICT

RESOLUTION NO. 5-2003

### OFFICIAL INTENT OF THE IMPERIAL IRRIGATION DISTRICT TO SUBMIT A PRELIMINARY LOAN GUARANTEE APPLICATION TO THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

**WHEREAS**, the Imperial Irrigation District (the "District") requires financial assistance in order to ensure that the District can issue revenue bonds required to finance a water supply project consisting of water conservation measures ("Project") designed to assure that California continues to receive the maximum amount of water from the Colorado River as well as for other purposes, and

**WHEREAS**, the District intends to obtain a Preliminary Loan Guarantee from the California Infrastructure and Economic Development Bank in accordance with the Bank's Criteria, Priorities and Guidelines for the Proposed Imperial Irrigation District Loan Program ("Bank's Criteria"); and

**WHEREAS**, the Bank's Criteria require an adopted resolution of the District's governing body requesting the Preliminary Loan Commitment; and

**WHEREAS**, the District acknowledges that the Loan Guarantee will be subject to the terms and conditions listed in Section D of the Bank's Criteria.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Imperial Irrigation District as follows:

Section 1. The Board of Directors of the District finds and determines that the foregoing recitals are true and correct.

Section 2. This resolution is adopted by the Board of Directors of the District for the purposes of establishing compliance with the Bank's Criteria.

Section 3. This resolution shall take effect from and after its adoption.

PASSED AND ADOPTED this 13 day of May, 2003



IMPERIAL IRRIGATION DISTRICT

BY [Signature]  
President

BY [Signature]  
Secretary

**EXHIBIT 3:  
IID INVESTMENT AND DEBT OUTSTANDING FOR ON FARM EFFICIENCY  
CONSERVATION CHART**

**Investment and Debt Outstanding for On Farm Efficiency Conservation**

